

FILED

JANUARY 23, 2008

KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

TERRY RHODES, PRO SE,
TDCJ-CID No. 782837,

Plaintiff,

v.

2:07-CV-0125

NATHANIEL QUARTERMAN,

Defendant.

REPORT AND RECOMMENDATION

The instant cause was transferred from the United States District Court for the Eastern District of Texas, Tyler Division, to the United States District Court for the Northern District of Texas, Amarillo Division, by Order executed May 25, 2007.

Plaintiff TERRY RHODES, acting pro se and while a prisoner incarcerated in the Texas Department of Criminal Justice, Correctional Institutions Division, has filed a document entitled “Petition for Writ of Habeas Corpus” which, after review by the Court, was construed to be a suit pursuant to Title 42, United States Code, section 1983 complaining primarily about plaintiff’s conditions of confinement and plaintiff was granted permission to proceed in forma pauperis.

On June 26, 2007, the Court issued a Notice of Deficiency Order giving plaintiff thirty days in which to submit his claims on a prisoner civil rights complaint form promulgated by the Court and attached to the Notice of Deficiency Order. Plaintiff was instructed that a failure to comply with the Order could lead to dismissal for failure to prosecute.

On July 11, 2007, plaintiff filed a pleading entitled “Plaintiff’s Constitutional Objections to Magistrate, and Order Docketing as Civil Rights - 1983 Suite Rule 59(e) Set Aside Judgment,

or Amend It." This pleading was construed to be plaintiff's objections to the Magistrate Judge's June 26, 2007 Order to Docket as a Prisoner Civil Rights Case and was overruled by Order of the United States District Judge issued July 16, 2007.

Subsequently, no pleading has been received in this cause and plaintiff has utterly failed to respond to the October 26, 2006 Notice of Deficiency Order.

It appears plaintiff has abandoned his cause and such cause should be dismissed for failure to prosecute. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962) (court possesses inherent power to dismiss *sua sponte* for lack of prosecution).

CONCLUSION

For the reasons set forth above, it is the RECOMMENDATION of the Magistrate Judge to the United States District Judge that the Civil Rights Complaint filed pursuant to Title 42, United States Code, Section 1983, by plaintiff TERRY RHODES be DISMISSED WITHOUT PREJUDICE for failure to prosecute.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 23rd day of January 2008.



CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(B), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(D). When service is made by mail or electronic means, three (3) days are added after the prescribed period. Fed. R. Civ. P. 6(e). Therefore, any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).